

**United States Department of Labor
Employees' Compensation Appeals Board**

L.T., Appellant

and

**U.S. POSTAL SERVICE, PIKESVILLE
CARRIER ANNEX, Pikesville, MD, Employer**

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**Docket No. 20-1539
Issued: August 2, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 27 2020 appellant filed a timely appeal from a June 19, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated January 14, 2020 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly determined that appellant abandoned her request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On February 7, 2005 appellant, then a 48-year-old distribution/window clerk, filed an occupational disease claim (Form CA-2) alleging that she developed right elbow and bilateral

¹ 5 U.S.C. § 8101 *et seq.*

shoulder tendinitis due to factors of her federal employment, including repetitive lifting and handling of mail. OWCP accepted the claim for unspecified disorders of the bursae and tendons in the right shoulder region, aggravation of cervical spondylosis without myelopathy, left shoulder impingement syndrome, and right lateral elbow epicondylitis. It paid appellant wage-loss compensation for intermittent periods of disability on the supplemental rolls as of March 8, 2004.

Appellant filed claims for compensation (Form CA-7) seeking a schedule award due to her accepted employment-related conditions. By decision dated April 30, 2009, OWCP granted appellant a schedule award for 18 percent permanent impairment of her right upper extremity and 6 percent permanent impairment of her left upper extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² The award ran for 74.88 weeks during the period October 9, 2008 to March 17, 2010.

On May 29, 2009 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 14, 2009. By decision dated December 2, 2009, OWCP's hearing representative set aside the April 30, 2009 schedule award decision, finding an unresolved conflict in the medical opinion evidence. By decision dated December 28, 2009, the Chief of the Branch of Hearings and Review vacated the December 2, 2009 decision and affirmed the April 30, 2009 schedule award decision.

By letter dated February 10, 2015, appellant authorized counsel to represent her before OWCP.

On November 24, 2019 appellant filed a Form CA-7 requesting an additional schedule award.

By decision dated January 14, 2020, OWCP denied appellant's request for an additional schedule award.

On February 12, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In an April 9, 2020 letter, OWCP notified appellant that a telephonic hearing was scheduled for June 3, 2020 at 1:30 p.m. Eastern Standard Time (EST). Appellant was provided a toll-free telephone number and passcode to access the hearing. The notice of hearing was mailed to appellant and her then-counsel at their addresses of record. Neither appellant nor then-counsel appeared for the hearing by telephone at the appointed time.

By decision dated June 19, 2020, OWCP's Branch of Hearings and Review determined that appellant abandoned her request for a telephonic hearing. It noted that an oral hearing was scheduled to be conducted by telephone on June 3, 2020 and that appellant received written notification of the hearing 30 days in advance of the hearing. Next, the Branch of Hearings and Review indicated that appellant failed to appear for the hearing and there was no indication in the

² A.M.A., *Guides* (6th ed. 2009).

file that she contacted OWCP either prior to or subsequent to the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.³ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁴ OWCP has the burden of proving that it was properly mailed to the claimant and any representative of record.⁵

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.⁶ The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁷

ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's January 14, 2020 decision denying appellant's request for an additional schedule award, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an April 9, 2020 letter, OWCP's Branch of Hearings and Review notified appellant and her then-counsel that it had scheduled a telephonic hearing for June 3, 2010 at 1:30 p.m. EST. OWCP properly mailed the notice to appellant's address of record. The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.⁸ Appellant and her then-counsel both failed to call-in for the scheduled hearing using the provided telephone number. They did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at 10.617(b).

⁵ *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁶ *Supra* note 3 at § 10.622(f).

⁷ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁸ *See V.C.*, *supra* note 5; *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

days of the scheduled hearing. As neither appellant nor her then-counsel requested a postponement, called-in to the scheduled hearing, or provided notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining failure to appear, the Board finds that appellant abandoned her request for an oral hearing.⁹

On appeal, appellant asserts that she did not abandon her hearing request. She stated that she had forgotten to call-in for the hearing due to her preoccupation with a June 2, 2020 pain management physician appointment. Additionally, she stated she was unaware that she could have notified OWCP within 10 days with this information. As explained above, the Board finds that she did not timely request a postponement of the hearing or provide the basis for her failure to participate within 10 days of the scheduled hearing, as required.

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *supra* note 7; see also *R.S.*, Docket No. 15-1358 (issued December 4, 2015).